

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DISTRICT

MICHAEL L. SICKINGER,

Plaintiff,

Case No:

v.

Hon.

LONNIE V. TUALA AND
BASIN TRANSPORTATION, LLC,

Defendants.

MICHAEL L. BATTERSBY (P29012)
THE SAM BERNSTEIN LAW FIRM
Attorneys for Plaintiff
31731 Northwestern Hwy., Suite 333
Farmington Hills, MI 48334
800.588.7121
mbattersby@sambernstein.com

EBONY L. DUFF (P65431)
GARAN LUCOW MILLER, P.C.
Attorney for Defendant Basin
Transportation, LLC
1155 Brewery Park Blvd., Suite 200
Detroit, MI 48207
313.446.5543
eduff@garanlucow.com

**NOTICE FOR REMOVAL OF CAUSE TO
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

NOW COMES Defendant, BASIN TRANSPORTATION, LLC, by and through its attorneys, GARAN LUCOW MILLER, P.C., and hereby gives notice of its removal of this action from the Circuit Court for the County of Wayne State of Michigan (Case No. 19-015538-NI) to the United States District Court for the Eastern District of Michigan Southern Division,

pursuant to 28 U.S.C. § 1332. In support of its Notice of Removal, BASIN TRANSPORTATION, LLC, states as follows:

1. State Court Action. This is an action initially filed in the Circuit Court for the County of Wayne, State of Michigan, on November 19, 2019, being numbered 19-015538-NI on the docket of said Court, asserting a claim against Defendants, LONNIE V. TUALA and BASIN TRANSPORTATION, LLC, seeking money damages for personal bodily injuries sustained and arising out of an automobile accident that occurred on October 24, 2018.

2. Diversity of Citizenship.

(a) The Plaintiff, as is alleged in Paragraph 1 of the Complaint, is a citizen of the United States and of the State of Michigan.

(b) Defendant BASIN TRANSPORTATION, LLC, as alleged in Paragraph 3 of the Complaint, is a Colorado Domestic Limited Liability Company with its principle place of business and Resident Agent in Littleton, Colorado.

(c) Defendant LONNIE V. TUALA, as alleged in Paragraph 2 of the Complaint, is a resident of the County of Macoupin, Illinois.

(d) For the purposes of the removal, Defendants are not citizens of the State of Michigan and, therefore, there exists a complete

diversity of citizenship between the parties and this Court has jurisdiction pursuant to 28 U.S.C. §1332.

3. Amount in Controversy. Plaintiff alleges that the amount in controversy exceeds \$25,000.

4. State Court Documents Attached. A Summons and Complaint was served upon Defendant BASIN TRNASPORTATION, LLC, on December 17, 2019, by certified mail return receipt requested. Removal is timely under 28 U.S.C. §1446(b). BASIN TRANSPORTATION, LLC, has not appeared in the Circuit Court for the County of Wayne, State of Michigan. Attached hereto as **Exhibit A** is a copy of the Summons and Complaint as it was served upon Defendant BASIN TRANSPORTATION, LLC.

5. Relief Requested. Defendant BASIN TRANSPORTATION, LLC respectfully requests the United States District Court for the Eastern District of Michigan accept this Notice of Removal and that it assume jurisdiction of this cause and issue such further orders and processes that may be necessary to bring before it all parties necessary for the trial hereof.

Respectfully submitted,

GARAN LUCOW MILLER, P.C.

/s/ Ebony L. Duff

EBONY L. DUFF (P65431)

Attorneys for Defendant

1155 Brewery Park Blvd., Suite 200

Detroit, MI 48207

313.446.5543

eduff@garanlucow.com

Dated: January 15, 2020

1485940

EXHIBIT A

Approved, SCAO

Original - Court
1st Copy- Defendant2nd Copy - Plaintiff
3rd Copy -Return**STATE OF MICHIGAN
THIRD JUDICIAL CIRCUIT
WAYNE COUNTY****SUMMONS****CASE NO.
19-015538-NI
Hon.David A. Groner**

Court address : 2 Woodward Ave., Detroit MI 48226

Court telephone no.: 313-224-5225

Plaintiff's name(s), address(es), and telephone no(s)
Sickinger, Michael L

v

Defendant's name(s), address(es), and telephone no(s).
Basin Transportation LLC**Plaintiff's attorney, bar no., address, and telephone no**Michael L. Battersby 29012
31731 Northwestern Hwy Ste 333
Farmington Hills, MI 48334-1669**Instructions:** Check the items below that apply to you and provide any required information. Submit this form to the court clerk along with your complaint and, if necessary, a case inventory addendum (form MC 21). The summons section will be completed by the court clerk.**Domestic Relations Case**

- ☐ There are no pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint.
- ☐ There is one or more pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint. I have separately filed a completed confidential case inventory (form MC 21) listing those cases.
- ☐ It is unknown if there are pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint.

Civil Case

- ☐ This is a business case in which all or part of the action includes a business or commercial dispute under MCL 600.8035
- ☐ MDHHS and a contracted health plan may have a right to recover expenses in this case. I certify that notice and a copy of the complaint will be provided to MDHHS and (if applicable) the contracted health plan in accordance with MCL 400.106(4).
- ☐ There is no other pending or resolved civil action arising out of the same transaction or occurrence as alleged in the complaint.
- ☐ A civil action between these parties or other parties arising out of the transaction or occurrence alleged in the complaint has

been previously filed in ☐ this court, ☐ _____ Court,

where it was given case number _____ and assigned to Judge _____.

The action ☐ remains ☐ is no longer pending.

Summons section completed by court clerk.

SUMMONS**NOTICE TO THE DEFENDANT:** In the name of the people of the State of Michigan you are notified:

1. You are being sued.
2. **YOU HAVE 21 DAYS** after receiving this summons and a copy of the complaint to **file a written answer with the court** and serve a copy on the other party **or take other lawful action with the court** (28 days if you were served by mail or you were served outside this state).
3. If you do not answer or take other action within the time allowed, judgment may be entered against you for the relief demanded in the complaint.
4. If you require special accommodations to use the court because of a disability or if you require a foreign language interpreter to help you fully participate in court proceedings, please contact the court immediately to make arrangements.

Issue date
11/19/2019Expiration date*
2/18/2020Court clerk
Deborah Bynum

Cathy M. Garrett- Wayne County Clerk.

*This summons is invalid unless served on or before its expiration date. This document must be sealed by the seal of the court.

MC 01 (9/19)

SUMMONS

MCR 1.109(D), MCR 2.102(B), MCR 2.103, MCR 2.104, MCR 2.105



SUMMONSCase No. : **19-015538-NI****PROOF OF SERVICE**

TO PROCESS SERVER: You are to serve the summons and complaint not later than 91 days from the date of filing or the date of expiration on the order for second summons. You must make and file your return with the court clerk. If you are unable to complete service you must return this original and all copies to the court clerk.

CERTIFICATE / AFFIDAVIT OF SERVICE / NONSERVICE☐ **OFFICER CERTIFICATE****OR**☐ **AFFIDAVIT OF PROCESS SERVER**

I certify that I am a sheriff, deputy sheriff, bailiff, appointed court officer, or attorney for a party (MCR 2.104[A][2]), and that: (notarization not required)

Being first duly sworn, I state that I am a legally competent adult, and I am not a party or an officer of a corporate party (MCR 2.103[A]), and that: (notarization required)

☐ I served personally a copy of the summons and complaint.

☐ I served by registered or certified mail (copy of return receipt attached) a copy of the summons and complaint, together with _____

List all documents served with the Summons and Complaint

_____ on the defendant(s):

Defendant's name	Complete address(es) of service	Day, date, time

☐ I have personally attempted to serve the summons and complaint, together with any attachments, on the following defendant(s) and have been unable to complete service.

Defendant's name	Complete address(es) of service	Day, date, time

I declare under the penalties of perjury that this proof of service has been examined by me and that its contents are true to the best of my information, knowledge, and belief.

Service fee \$	Miles traveled \$	Fee \$	
Incorrect address fee \$	Miles traveled \$	Fee \$	Total fee \$

Signature _____

Name (type or print) _____

Title _____

Subscribed and sworn to before me on _____, _____ County, Michigan.
Date

My commission expires: _____ Signature: _____
Date Deputy court clerk/Notary public

Notary public, State of Michigan, County of _____

ACKNOWLEDGMENT OF SERVICE

I acknowledge that I have received service of the summons and complaint, together with _____ Attachments

_____ on _____
Day, date, time

_____ on behalf of _____

Signature

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

MICHAEL L. SICKINGER,

Plaintiff,

Case No. 19-
Hon.

-NI

v.

LONNIE V. TUALA AND
BASIN TRANSPORTATION, LLC,

Defendants.

THE SAM BERNSTEIN LAW FIRM
MICHAEL L. BATTERSBY (P29012)
Attorneys for Plaintiff
31731 Northwestern Highway, Suite 333
Farmington Hills, Michigan 48334
(800) 588-7121
mbattersby@sambernstein.com
Sec: lfuller@sambernstein.com

There is no other civil action between these parties arising out of the same transaction or occurrence as alleged in this Complaint pending in this Court; nor has any such action been previously filed and dismissed or transferred after having been assigned to a Judge; nor do I know of any other civil action, not between these parties, arising out of the same transaction or occurrence as alleged in this Complaint that is either pending or was previously filed and dismissed, transferred, or otherwise disposed of after having been assigned to a Judge in this Court.

COMPLAINT AND JURY DEMAND

NOW COMES the Plaintiff, MICHAEL L. SICKINGER, by and through his attorneys, THE SAM BERNSTEIN LAW FIRM, by MICHAEL L. BATTERSBY and for his cause of action against the Defendants respectfully shows unto this Honorable Court as follows:

1. That the Plaintiff, Michael L. Sickinger (hereinafter referred to as "Sickinger") is a resident of the City of Dearborn Heights, County of Wayne, State of Michigan.
2. That Defendant driver, Lonnie V. Tuala (hereafter referred to as "Tuala"), was at

all times relative hereto a resident of the City of Nilwood, County of Macoupin, State of Illinois.

3. That the Defendant owner Basin Transportation, LLC is a Colorado Domestic Limited Liability Company (hereinafter referred to as “Basin”) that is duly authorized to do business in, and does business in, the County of Wayne, State of Michigan and its Resident Agent is Corporation Service Company, 1900 W. Littleton Blvd., Littleton, CO 80120.

4. That Defendant Tuala was, at all times relevant hereto, in the employment of Defendant BASIN, and its Resident Agent is Corporation Service Company, 1900 W. Littleton Blvd., Littleton, CO 80120.

5. That all the acts, transactions and occurrences arose in the City of Dearborn, County of Wayne, State of Michigan.

6. That the amount in controversy in this litigation exceeds the sum of Twenty-Five Thousand (\$25,000) Dollars exclusive of costs, interest and attorney fees.

COUNT I

7. That on the 24th day of October, 2018 at or about the hour of 8:00 a.m., your Plaintiff was the operator of a 2009 Ford Fusion motor vehicle bearing Michigan license plate number DPY8535 which automobile was being driven in a careful and prudent manner in a easterly direction along and upon eastbound I-94 at or near its intersection with Michigan Avenue in the City of Dearborn, County of Wayne, State of Michigan.

8. That at the aforementioned date and time, Defendant BASIN was the owner of the vehicle and the employer of Defendant Tuala, who was driving the 2019 Peterbilt Truck, bearing Oklahoma license plate number 3CH584, which truck was being driven with its knowledge and/or consent by its employee Defendant Tuala in a careless, reckless, and grossly negligent manner in an easterly direction along and upon eastbound I-94 at or near its

intersection with Michigan Avenue in the City of Dearborn, County of Wayne, State of Michigan when Defendant Tuala merged into the right lane (occupied by Plaintiff) from the middle lane and struck Plaintiff's vehicle while merging which forced Plaintiff's vehicle to hit the wall, thereby causing the collision and causing serious and permanent injuries to your Plaintiff as hereinafter alleged.

9. That at the aforementioned place and time, Defendant BASIN was the owner of the 2019 Peterbilt motor vehicle bearing Michigan license plate number 3CH584, which motor vehicle said Defendant Tuala was driving in a careless, reckless and grossly negligent manner in an easterly direction along and upon eastbound 1-94 at or near its intersection with Michigan Avenue in the City of Dearborn, County of Wayne, State of Michigan when Defendant Tuala merged into the right lane (occupied by Plaintiff) from the middle lane and struck Plaintiff's vehicle while merging which forced Plaintiff's vehicle to hit the wall, thereby causing the collision and causing serious and permanent injuries to your Plaintiff as hereinafter alleged.

10. That it then and there became and was the duty of Defendant Tuala, to drive said motor vehicle with due care and caution in accordance with the statutes of the State of Michigan and the rules of the common law applicable to the operation of motor vehicles, but that notwithstanding said duties, your Defendants did breach and violate the same in one or more of the following particulars:

- a. Driving said motor vehicle on the highway at a speed greater than would permit him to bring it to a stop within the assured clear distance ahead, contrary to the provisions of MCLA 257.627;
- b. Driving at an excessive and unlawful speed;
- c. Failing to drive said motor vehicle on the highway at a careful and prudent speed, not greater than was reasonable and proper, having due regard to the traffic,

THE
SAM BERNSTEIN
LAW FIRM

31731 NORTHWESTERN HIGHWAY

SUITE 333

FARMINGTON HILLS,

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LIABILITY COMPANY

surface and width of the highway and other conditions then and there existing as required by MCLA 257.627;

- d. Failing to keep a proper or any lookout when Defendant knew or should have known that such failure would endanger the life and limb of other persons along and upon said highway;
- e. Failing to give audible warning of the approach or presence of said motor vehicle when reasonably necessary to insure its safe operation as required by MCLA 257.706;
- f. Driving a vehicle on a highway recklessly, with gross negligence and with willful or wanton disregard for the safety of others in violation of MCLA 257.626 et. seq.
- g. Failing to have said automobile equipped with brakes adequate to control its movement and stop and hold it as required by MCLA 257.705 or in the alternative, failing to use said equipment;
- h. Failing to keep said vehicle under control at all times relevant to this matter;
- i. Turning such motor vehicle from a direct line without first ascertaining that such movement could be made in safety and giving a signal as required by MCLA 257.648;
- j. In otherwise negligently failing to exert that degree of care, caution, diligence and prudence as would be demonstrated by a reasonably prudent person under the same or similar circumstances and in otherwise causing the injuries and damages to the minor Plaintiff as hereinafter alleged;
- k. In other manners as yet unknown to the Plaintiff but which will become known during the course of discovery.

11. That Defendant BASIN is vicariously liable for the negligent acts and/or omissions of Defendant Tuala by virtue of the terms of the applicable Owners Liability Statute.

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12. That Defendant BASIN is vicariously liable for the negligent acts and/or omissions of Defendant Tuala by virtue of Respondeat Superior because said Defendant was an agent or employee of Defendant BASIN in the course and scope of his employment at all times relevant hereto.

13. That as a direct and proximate result of the negligent acts and/or omissions on the part of Defendant Tuala, your Plaintiff was caused and will be caused in the future to suffer with severe, grievous and permanent personal injuries, disability, damages, serious impairment of bodily functions and permanent, serious disfigurement, the full extent and character of which are currently unknown but, which will include but, are not necessarily limited to the following:

- a. Internal Derangement of the Left Shoulder;
- b. Bilateral Knee Pain;
- c. Lumbar Strain;
- d. Thoracic Strain;
- e. Lumbar Radiculopathy;
- f. Major Depressive Disorder;
- g. Stressor-Related Disorder;
- h. Situational Specific Phobia;
- i. Scarring;
- j. Aggravation of pre-existing injuries and/or diseases;
- k. Any and all other manners of internal or external injuries;
- l. Pain, suffering, discomfort, disability, and extreme physical and emotional suffering;

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- m. Severe and continuing embarrassment, humiliation, anxiety, tension and mortification;
- n. Loss of the natural enjoyments of life; and
- o. Loss of wages and/or earning capacity.

14. That as a direct and proximate result of the Defendant's negligence and unlawful conduct, Plaintiff has been required to undergo various and certain medical and operative procedures and will be required to undergo like treatment in the future.

WHEREFORE, Plaintiff, Michael L. Sickinger, prays that this Honorable Court award him damages against Defendant Tuala in whatever amount to which Plaintiff is found to be entitled, together with costs, interest and attorney fees.

COUNT II - VICARIOUS LIABILITY

15. That Plaintiff hereby adopts and incorporates by reference each and every allegation contained in COUNT I of this Complaint as if more specifically set forth herein, word for word and paragraph by paragraph.

16. That Defendant BASIN is vicariously liable for the negligent acts and/or omissions of the Defendant Tuala by virtue of the terms of the applicable Owners Liability Statute.

17. That on the 24th day of October, 2018 at or about the hour of 8:00 a.m., it was the duty of Defendant BASIN to exercise due care and caution in the entrustment of their motor vehicle, so as not to entrust the use of such motor vehicle to a driver that such Defendant knew or had reason to know was likely to drive such motor vehicle in a careless, reckless and grossly negligent fashion.

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18. That on the aforementioned date, Defendant BASIN knew or should have known of Defendant Tuala's reckless, careless, negligent driving and gross negligent driving habits, including an indifference to the traffic laws of the State of Michigan.

19. That notwithstanding that Defendant BASIN knew or had reason to know of the poor driving habits of Defendant Tuala, this Defendant did entrust said motor vehicle to his use and he did drive such motor vehicle in a careless, reckless, negligent and grossly negligent fashion as set forth in COUNT I of this Complaint, causing all such injuries, damages and losses to Plaintiff as set forth in COUNT I of this Complaint.

WHEREFORE, Plaintiff Michael L. Sickinger prays that this Honorable Court award him damages against Defendant BASIN in whatever amount in excess of Twenty-Five Thousand (\$25,000.00) Dollars to which he is found to be entitled to receive, together with costs, interest and attorney fees.

COUNT III - RESPONDEAT SUPERIOR

20. That Plaintiff hereby adopts and incorporates by reference each and every allegation contained in COUNT I and COUNT II of this Complaint as if more specifically set forth herein, word for word and paragraph by paragraph.

21. That on or about the 24th day of October, 2018, it was the duty of the Defendant BASIN to train and supervise its employees in accordance with established safe practice in their acts and deeds during the course of their employment.

22. That on the aforementioned date, Defendant BASIN knew or should have known that its employees were engaging in dangerous practices in the course of employment.

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23. That Defendant BASIN breached its duties to properly train and supervise its employees in conformity with the prevailing standards of care and common law so as to discover and prohibit its employees from engaging in dangerous conduct from which it was foreseeable that persons would be seriously injured.

24. That notwithstanding that the Defendant BASIN did breach its duties and was negligent thereby in allowing its employees to engage in dangerous activities and dangerous practices in the course of their employment.

25. That as a direct and proximate result of the negligent acts and/or omissions on the part of the Defendant BASIN your Plaintiff was caused and will be caused in the future to suffer with severe, grievous and permanent personal injuries, disability, damages, serious impairment of bodily functions and permanent, serious disfigurement, the full extent and character of which are currently unknown but, which will include but, are not necessarily limited to those listed in paragraph 13 of this Complaint.

WHEREFORE, Plaintiff Michael L. Sickinger prays that this Honorable Court award him damages against the Defendant BASIN in whatever amount to which he is found to be entitled to receive, together with costs, interest and attorney fees.

JURY DEMAND

NOW COMES the Plaintiff Michael L. Sickinger, by and through his attorneys, THE SAM BERNSTEIN LAW FIRM, by MICHAEL L. BATTERSBY and hereby respectfully requests a trial by jury in the above-entitled cause of action.

THE
SAM BERNSTEIN
LAW FIRM

31731 NORTHWESTERN HIGHWAY

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FARMINGTON HILLS,

MICHIGAN 48334-1669

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A PROFESSIONAL LIMITED
LIABILITY COMPANY

THE SAM BERNSTEIN LAW FIRM

/s/ Michael L. Battersby

BY: Michael L. Battersby (P29012)

Attorneys for Plaintiff

31731 Northwestern Highway Suite 333

Farmington Hills, Michigan 48334

(800) 588-7121

Dated: November 18, 2019

matters set forth in said Notice are true except as to those matters stated herein to be upon his information and belief as to which matters she is informed and believes same to be true.

Further deponent sayeth not.

/s/ Ebony L. Duff
EBONY L. DUFF (P65431)

Subscribed and sworn to before me
on the 15th day of January, 2020

/s/ Susan M. Westphal
Susan M. Westphal, Notary Public
County of Wayne, State of Michigan
My Commission Expires: 05/10/2020

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DISTRICT

CERTIFICATE OF SERVICE

SUSAN M. WESTPHAL, being first duly sworn, deposes and says that she is employed with the law firm of GARAN LUCOW MILLER, P.C., and that on the 15th day of January, 2020, she caused to be served a true copy of **NOTICE FOR REMOVAL, AFFIDAVIT and PROOF OF SERVICE** upon the following:

Michael L. Battersby (P29012)
Attorney for Plaintiff
mbattersby@sambernstein.com

Clerk Assignment
WAYNE COUNTY CIRCUIT COURT
Two Woodward Avenue
Detroit, MI 48226

by electronic filing the foregoing paper with the Clerk of the Court using the E-File & Serve system.

/s/ Susan M. Westphal

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

MICHAEL L. SICKINGER,

Plaintiff,

v.

LONNIE V. TUALA AND
BASIN TRANSPORTATION, LLC,

Defendants.

Case No: 19-015538-NI

Hon. David A. Groner

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THE SAM BERNSTEIN LAW FIRM
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EBONY L. DUFF (P65431)
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Attorney for Defendant Basin
Transportation, LLC
1155 Brewery Park Blvd., Suite 200
Detroit, MI 48207
313.446.5543
eduff@garanlucow.com

NOTICE OF FILING OF REMOVAL

PLEASE TAKE NOTICE that a Notice of Removal of the entitled action from the Wayne County Circuit Court, State of Michigan, to the United States District Court for the Eastern District of Michigan, a copy of which is attached hereto, was duly filed on January 15, 2020, in the United States District Court for the Eastern District of Michigan.

Respectfully submitted,

GARAN LUCOW MILLER, P.C.

/s/ Ebony L. Duff
EBONY L. DUFF (P65431)
Attorneys for Defendant Basin
Transportation, LLC
1155 Brewery Park Blvd., Suite 200
Detroit, MI 48207
313.446.5543

Dated: January 15, 2020
1486360

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

MICHAEL L. SICKINGER,

Plaintiff,

Case No: 19-015538-NI

v.

Hon. David A. Groner

LONNIE V. TUALA AND
BASIN TRANSPORTATION, LLC,

Defendants.

MICHAEL L. BATTERSBY (P29012)
THE SAM BERNSTEIN LAW FIRM
Attorneys for Plaintiff
31731 Northwestern Hwy., Suite 333
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EBONY L. DUFF (P65431)
GARAN LUCOW MILLER, P.C.
Attorney for Defendant Basin
Transportation, LLC
1155 Brewery Park Blvd., Suite 200
Detroit, MI 48207
313.446.5543
eduff@garanlucow.com

PROOF OF SERVICE

STATE OF MICHIGAN)

) ss.

COUNTY OF WAYNE)

DEBORAH BROSSOIT, being first duly sworn, deposes and says that she is employed by GARAN LUCOW MILLER, P.C., and that on the 15th day of January, 2020, she served by electronic filing the foregoing paper with the Clerk of the Court using the Court's E-File and Serve website which will send notification of such filing to the following:

Michael L. Battersby (P29012)
Attorney for Plaintiff
mbattersby@sambernstein.com

/s/ Susan M. Westphal